



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Noncomplying Private Water  
Supply Owned by Ray A. and Betty E. Larson on  
Property Located in the Town of Eagle Point,  
Chippewa County, Wisconsin

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Case No.: 98-WCEE-077A

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Ray A. and Betty E. Larson own and operate a private water supply, Unique Well #HN 733, located at Fire Number 9063, in the NE ¼ of the NW ¼ of Section 27, Township 29 North, Range 8 West, Town of Eagle Point, Chippewa County, Wisconsin.

In August, 1994, a well was constructed for Mr. and Mrs. Larson by Eagle Well Service. On November 10, 1995, Mr. Ray Larson requested that the Department of Natural Resources grant a variance allowing him to keep his noncomplying well installation. On December 20, 1995, the Department denied Mr. Larson's variance request.

On February 4, 1999, the Department of Natural Resources issued Order No. 98-WCEE-077 to Ray A. and Betty E. Larson ordering them to Permanently abandon Unique Well #HN 733 and submit a well report within 30 days of the abandonment of the well.

The Department received a request for hearing dated March 22, 1999 from Attorney Gary M. King on behalf of Ray A. and Betty E. Larson on the Department's Order No. 98-WCEE-077. On June 18, 1999, the Department forwarded the matter to the Division of Hearings and Appeals.

Pursuant to due notice hearing was held on April 25, 2000 at Chippewa Falls, Wisconsin, Jeffrey D. Boldt, administrative law judge (the ALJ), presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Ray A. and Betty E. Larson, by

Attorney James M. Isaacson  
108 West McRae Street  
P. O. Box 97  
Cadott, WI 54727

Wisconsin Department of Natural Resources, by

Attorney Edwina Kavanaugh  
P. O. Box 7921  
Madison, WI 53707-7921

## FINDINGS OF FACT

1. Ray A. Larson and Betty E. Larson (the Larsons or the respondents) own and operate a private water supply, WI Unique Well ("WUW) #HN 733, located at Fire Number 9063, in the NE ¼ of the NW ¼ of Section 27, T29N, R8W, Town of Eagle Point, Chippewa County, Wisconsin. On August 8, 1994, Eagle Well Service drilled WUW #HN 733 as a 6 inch diameter well, cased to a depth of 27 feet below the ground surface with a screen extending 3 feet below the casing. (Exhibit 3)

2. As reported in a Well Construction Report dated Aug. 8, 1994, and signed by Christopher Olson of Eagle Well Service, the static water level for WUW #HN 733 was 4 feet below ground surface, and the well when tested by Mr. Olson pumped at 12 GPM for 1/2 hour. (Exhibit 3)

3. In a letter dated November 10, 1995, Ray Larson admitted that he had jacked the well casing of WUW #HN 733 up 11 feet, cut it off and filled the casing with sand, then drove a point down to 20 feet. (Exhibit 5)

4. WUW #HN 733 is located in an unconsolidated formation.

5. In a variance application dated Nov. 10, 1995, Ray Larson noted he was "not able to go deeper than 20' because bad rust in sand" and attached a drawing of WUW #HN 733 with a line drawn at the bottom of the drive point labeled as "-bottom, 2W." (Exhibit 5)

6. By letter dated December 20, 1995, WDNR's Larry Schaefer denied the request for a variance noted in Fact No. 5. (Exhibit 6)

7. The denial letter (Exhibit 6) noted in Fact No. 6 contained a Notice of Appeal Rights, as required by sec. 227.48(2), Stats., advising the Larsons they had 30 days after the decision was mailed to file a petition appealing the decision.

8. On December 21, 1995, Mr. Larson called WDNR's Larry Schaefer to discuss the denial of his variance request and agreed to drive the point down to the 25 feet depth the next spring. (Exhibit 7)

9. Neither the Larsons nor their representative filed a petition appealing the variance decision within the time allowed under secs. 227.42 and 227.52, Stats., and, sec. NR 2.05, Wis.

Adm. Code, nor at any time thereafter. Accordingly, the variance is not an issue in the instant proceeding.

10. In letters dated July 1 and September 3, 1996, Mr. Larson stated he was not getting any volume of water at a casing depth of 26 feet that the water he was getting was sandy, and that his best flow was at 21 feet. (Exhibits 9 & 10)

11. In a letter dated August 4, 1997, WDNRs Larry Schaefer advised Mr. Larson he had discussed variances for high iron content with WDNR's central office and that the WDNR could issue such variances, and listed the information the Larsons needed to submit in order for the Department to, reconsider the variance application that had been denied on December 20, 1995. (Exhibit 14)

12. In a Notice of Noncompliance ("NON") dated October 9, 1997, WDNR's Larry Schaefer again advised Mr. Larson of the information needed to reconsider the variance request, advised him that his well continued to violate Ch. NR 812, Wis. Adm. Code, because it had inadequate casing depth, and advised him that if WDNR did not receive the Information needed to reconsider the variance denial within 30 days that the well must either be driven to the minimum 25 foot casing depth or properly abandoned. (Exhibit 16)

13. On October 27, 1997, Mr. Larson visited WDNR's Larry Schaefer to discuss the NON noted in Fact No. 13, and by letter dated November 7, 1997, Mr. Schaefer extended until November 24, 1997, the time for Mr. Larson to submit plans to bring WUW #HN 733 into compliance. (Exhibit 17)

14. By letter dated November 18, 1997, to WDNR's Larry Schaefer, attorney Jim Isaacson noted he was representing the Larsons and asked for additional time to respond as requested in Fact Nos. 11, 12, and 13. (Exhibit 18)

15. Neither the Larsons nor their representatives submitted the information requested as noted in Fact Nos. 11, 12, and 13. (Exhibits 14, 16, 17 and 24)

16. On February 4, 1999, the Department issued Order # 98-WCEE-077 to the Larsons ordering them to permanently abandon WUW #HN 733 by May 1, 1999, and within 30 days of doing so, to submit a well abandonment report that complies, with sec. NR 812.26(8), Wis. Adm. Code. (Exhibit 26)

17. By letter dated February 9, 1999, the Department corrected a date error in Order # 98-WCEE-077 from August 7, 1997 to August 7, 1998, and added an additional sentence that contained the dates July 29, 1999 and July 30, 1998. (Exhibit 27)

18. The date noted in Fact No. 23 as July 29, 1999, should have read July 29, 1998. (Exhibits 23 and 24)

19. By verified petition dated March 18, 1999, and letter dated April 16, 1999, attorney Gary King petitioned for a hearing to contest the issuance of Order # 98-WCEE-077. (Exhibits 28-30)

20. By letter dated June 15, 1999, WDNR Secretary George Meyer granted petitioner's request for a hearing pursuant to sec. 281.19(8), Stats. (Exhibit 31)

21. After several notices and reschedules, on December 16, 1999, the hearing was noticed for April 25, 2000. (Exhibits 32-36)

22. WUW #HN has not been abandoned nor reported as abandoned pursuant to Ch. NR 812, Wis. Adm. Code, as of April 25, 2000, and its casing depth remains at less than the 25 feet required by sec. NR 812.13(1)(b)l, Wis. Adm. Code.

23. Based upon the above Findings of Fact, Order No. 98-WCEE-077, which required Ray A. and Betty Larson to permanently abandon WI. Unique Well #HN 733 by May 1, 1999, and within 30 days of doing so submit a well abandonment report that complies with sec. NR 812.26(8), Wis. Adm. Code, is reasonable and necessary to accomplish the purposes of Chs. 280 and 281, Stats., and Ch. NR 812, Wis. Adm. Code.

## DISCUSSION

Mr. Larry Schaefer, DNR Area Drinking Water Expert, testified persuasively that there is a significant health risk with the well in its present configuration. The shorter well casing makes the well vulnerable to contamination from bacteria. This is of particular concern given the large new subdivision, Larson's Landing, which is being developed on contiguous acres.

The casing was shortened by Mr. Larson because of concerns about iron. Yet, the Larsons have not responded to the Department's reasonable requests for test results relating to iron content. The record indicated that there were several options available to treat iron content, including but not limited to installing a simple water softener system. The cabin has limited space to install such a system, however, this does not appear to be an insurmountable problem. A small enclosure could be added to house a water softener, or other iron removal equipment on an as-needed basis. (Boetteher)

The DNR has given the respondents every opportunity to bring their well into compliance. The Larsons have not done so. The regulations relating to minimum well standards are not optional, for the Department or the Division. The well needs to be brought up to code within the time set forth in the Order, or there is no choice but to require a proper abandonment.

## CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary orders in cases relating to well abandonment pursuant to sec. 227.43, Stats.

2. Under secs. 281.11 and 280.11, Stats. the Department of Natural Resources serves as the central unit of state government to protect, maintain and improve the quality and management of the waters of this state, ground and surface, public and private, and has the responsibility for general supervision of all methods of obtaining groundwater for human consumption including sanitary conditions surrounding the same and construction or reconstruction of wells.

3. Under sec. NR 812.42(1)(b), Wis. Adm. Code, a well must conform to the construction requirements in effect when the well was constructed, except if the well was constructed before April 10, 1953, construction shall conform to the standards adopted on that date. A well which meets the requirements of sec. NR 812.11 to 812.15, Wis. Adm. Code, may only be rebuilt with Department approval.

4. Under sec. NR 812.13(1)(b)l, Wis. Adm. Code, the minimum well casing pipe depth for all drilled wells in unconsolidated formations, not including any screen, is: 1. For nonpotable high capacity wells and for low capacity wells, except school and wastewater treatment plant wells, a minimum depth of 25 feet or 10 feet below the static water level, whichever is greater.

5. Under sec. NR 812.26(2)(a)8, Wis. Adm. Code, a well owner must permanently abandon a well if its construction or location does not comply with the minimum standards of Ch. NR 812, Wis. Adm. Code, unless the Department issues a variance under sec. NR 812.43, Wis. Adm. Code, for the noncomplying construction feature or location.

6. Under sec. NR 812.43, Wis. Adm. Code, the Department may issue a variance to certain requirements of Ch. NR 812 when it determines that strict compliance with such requirements is not feasible, and may condition the issuance of a variance by requiring additional construction or installation features to safeguard the groundwater and water supplied by the installation from contamination.

7. Decisions by the Department to approve or deny an application for a variance may be appealed if they meet the standards noted under secs. 227.42 and 227.52, Stats., and are filed within the period required by statute and sec. NR 2.05, Wis. Adm. Code.

8. The Department is authorized by secs. 281.19(2) and 280.13(1)(c), Stats., to issue orders for well repair, correction, or abandonment.

9. Orders issued under secs. 281.19(2) and 280.13(1)(c), Stats., may be appealed under s. 281.19(8), Stats.

10. The standard of review of orders appealed under s. 281.19(8), Stats., is whether the order is reasonable and necessary to accomplish the purposes set forth in Chs. 281 and 280, Stats., and NR 812, Wis. Adm. Code.

11. Orders issued under secs. 281.19(2) and 280.13(1 )(c), Stats., and NR 812, Wis. Adm. Code, are enforceable under secs. 281.98, 299.95, and 299.97, Stats.

### ORDER

The respondent shall have until June 16, 2000, to bring the well into compliance and shall by licensed well-driller certify to the satisfaction of the Department that the well is in compliance.

If the well is not in compliance by June 19, 2000, the respondent shall permanently abandon WI Unique Well #HN 733. Abandonment shall be completed by said date and the respondent shall submit a well abandonment report that complies with sec. NR 812(26)(8), Wis. Adm. Code by July 21, 2000.

Dated at Madison, Wisconsin on May 10, 2000.

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By \_\_\_\_\_  
JEFFREY D. BOLDT  
ADMINISTRATIVE LAW JUDGE